

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

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<b>AMEREN ILLINOIS COMPANY</b>	:	
<b>d/b/a Ameren Illinois, Petitioner</b>	:	
	:	
<b>Proposed clarification of natural gas</b>	:	<b>Docket No. 15-0439</b>
<b>tariffs, particularly sections related to</b>	:	
<b>transportation of customer-owned</b>	:	
<b>natural gas.</b>	:	

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**STAFF OF THE ILLINOIS COMMERCE COMMISSION  
REPLY BRIEF ON EXCEPTIONS**

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The Staff of the Illinois Commerce Commission (“Staff”), by and through its counsel, and pursuant to Section 200.830 of the Commission's Rules of Practice (83 Ill. Adm. Code 200.830), respectfully submits its Reply Brief on Exceptions (“RBOE”) in the above-captioned matter.

**I. BACKGROUND**

On July 28, 2015, Ameren Illinois Company d/b/a Ameren Illinois (“AIC”, “Ameren” or “Company”) filed with the Illinois Commerce Commission (“Commission”) revisions to its natural gas tariffs. Ameren, ICC Suspension Order Docket No. 15-0439, 2 (July 28, 2015.) The Company seeks a clarification of natural gas tariffs, particularly sections related to transportation of customer-owned natural gas. (Ameren Ex. 1.0, 2.)

The Commission entered suspension and resuspension orders on July 28, 2015 and October 21, 2015, respectively.

The Company filed the direct and rebuttal testimony of Vonda K. Seckler on October 26, 2015 and December 23, 2015.

Staff filed the direct testimony of Dr. David Rearden on December 4, 2015. The Retail Energy Supply Association ("RESA") and Caterpillar, Inc., Archer-Daniels-Midland Company, Tate & Lyle Ingredients Americas, Inc. and Viscofan USA, Inc., collectively as Illinois Industrial Energy Consumers ("IIEC") jointly filed the direct testimony of Brian C. Collins on December 4, 2015.

An evidentiary hearing was held on January 13, 2016. At the close of the evidentiary hearing the record was marked heard and taken.

Initial Briefs ("IB") and Reply Briefs ("RB") were filed by Staff, Ameren, RESA, and IIEC on January 27, 2016 and February 9, 2016, respectively.

On March 4, 2016, the Administrative Law Judge ("ALJ") issued a Proposed Order ("ALJPO" or "PO"). The ALJ set March 18, 2016 and March 25, 2016 for the filing of exceptions ("BOE") and RBOE, respectively.

Only the Company took exception to the ALJPO.

Staff's RBOE is set forth below. The absence of a Staff reply to arguments or positions taken by the Company in its BOE does not imply that Staff agrees or accepts the Company's arguments or position.

## **II. ARGUMENT**

Ameren argues that the ALJPO's rejection of its proposed cashout provisions is arbitrary, capricious and not supported by substantial evidence of record. Ameren BOE, 4. Ameren further argues that if the Commission does not correct the ALJPO, it would constitute reversible error. Id. The Commission should reject Ameren's arguments. The

ALJPO is well-reasoned and the findings and conclusions contained therein are supported by the evidence.

Ameren's arguments should be rejected for a number of reasons. First, in arguing that the Proposed Order is not supported by substantial evidence, Ameren demonstrates a profound misunderstanding of the meaning of the term "substantial evidence." In fact, "[s]ubstantial evidence' means more than a mere scintilla; however, it does not have to rise to the level of a preponderance of the evidence." Commonwealth Edison Co. v. Illinois Commerce Comm'n, 398 Ill. App. 3d 510, 514 (2d Dist. 2009). "It is evidence that a 'reasoning mind would accept as sufficient to support a particular conclusion.'" Id., quoting Citizens Utility Board v. Illinois Commerce Comm'n, 291 Ill. App. 3d 300, 304 (1st Dist. 1997).

The Proposed Order's conclusions are supported by a preponderance of evidence, which means *a fortiori* that they are supported by substantial evidence. The ALJPO properly credits testimony of both Staff and RESA/IIEC addressing Ameren's proposed cashout provisions. The ALJPO relies upon Staff's testimony that Ameren's cashout provisions could be unfair to transportation customers under certain circumstances. ALJPO, 21. As Staff demonstrated in its RB, under Ameren's proposal, when market prices diverge from the PGA, Ameren could buy gas from its suppliers at prices significantly below the market when PGA prices are low, or it might sell gas to suppliers at prices significantly above the market when the PGA is high. In these cases, suppliers are forced to subsidize PGA customers. (Staff RB, 8-9.) The ALJPO relies upon RESA/IIEC's testimony that Ameren failed to show a net harm to PGA customers under the current cashout provisions and recognized that Ameren's proposed cashout provisions would penalize a majority of transportation customers for the activity of

precisely one such customer. ALJPO, 21. Both Staff's and RESA/IIEC's testimony supports the ALJPO's analysis and conclusion.

A second reason to reject Ameren's arguments is that Ameren has the wrong understanding of the burden of proof. Ameren appears to conclude that, if it files a tariff, that tariff must be adopted unless other parties can demonstrate that it is not just and reasonable. Ameren's BOE argues that the ALJ has the burden of showing that existing tariffs are just and reasonable ("the ALJPO not only failed to identify a meritorious reason for rejecting the Company's proposal, it failed to respond at all" (Ameren BOE, 5)), rather than recognizing that Ameren has the burden of proof to support its proposal. The Illinois Public Utilities Act specifically provides that the burden is squarely on a utility proposing a tariff or tariff changes – in this case, Ameren - to demonstrate that its proposed tariff changes are just and reasonable. ("[T]he burden of proof to establish the justness and reasonableness of the proposed rates or other charges, classifications, contracts, practices, rules or regulations, in whole and in part, shall be upon the utility") (emphasis added). 220 ILCS 5/9-201(c) Moreover, Ameren currently has a tariffed cashout provision in force and effect which, unless and until shown to be otherwise, is just and reasonable as a matter of law. Thus, neither Staff, RESA/IIEC nor even the ALJ is required to present any evidence supporting the status quo – the existing just and reasonable cashout provisions. Instead, Ameren must demonstrate by a preponderance of the evidence that its proposed tariff changes are just and reasonable.

As the Proposed Order correctly finds, Ameren has conspicuously failed to make such a showing here. The ALJ's analysis in the Proposed Order is clear on this point, stating that the "record does not contain an extensive analysis to support a change in the imbalance cashout provisions for Transportation Customers." ALJPO, 21. In other words,

the Proposed Order correctly recognizes – as Ameren does not – that (a) Ameren has the burden of proof in this proceeding; and (b) Ameren has failed to meet that burden.

A third reason to reject Ameren’s arguments is that there are other options available to address Ameren’s concerns. Despite Ameren’s claim that its proposal is the only way to address its cashout provision concerns (Ameren BOE, 2), Staff witness Dr. David Rearden identified other cashout models, such as those used by the Peoples Gas Light & Coke Company and Northern Illinois Gas Company, which rely upon market prices, rather than the PGA, that could serve as a model for Ameren to address its alleged issues with its existing tariffs. The ALJ recognized that fact and appropriately encouraged Ameren to work with Staff and transportation customers to develop an alternative to Ameren’s proposal which would not result in a cross-subsidization between transportation customers and PGA customers. ALJPO, 21. Staff is prepared to work with Ameren and its transportation customers to address the issues should Ameren decide to follow the ALJPO’s recommendation.

### **III. CONCLUSION**

Staff respectfully requests that the Illinois Commerce Commission approve Staff’s recommendations in this docket.

Respectfully submitted,

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March 25, 2016

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